

Nos. 23-1174, 23-1175, 23-1221, 23-1222

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IN THE  
**United States Court of Appeals for the District of  
Columbia Circuit**

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CITY OF PORT ISABEL, ET AL.,

*Petitioners,*

*v.*

FEDERAL ENERGY REGULATORY COMMISSION,

*Respondent,*

RIO BRAVO PIPELINE COMPANY, LLC; RIO GRANDE LNG, LLC;  
TEXAS LNG BROWNSVILLE, LLC

*Intervenors for Respondent.*

On Petition for Review of Orders of the Federal  
Energy Regulatory Commission

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**INTERVENORS RIO GRANDE LNG, LLC, RIO BRAVO  
PIPELINE COMPANY, LLC AND TEXAS LNG BROWNSVILLE,  
LLC'S JOINT MOTION FOR LEAVE TO FILE REPLY IN  
SUPPORT OF PETITIONS FOR REHEARING OR REHEARING  
EN BANC**

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## **INTRODUCTION**

Pursuant to Federal Rules of Appellate Procedure 27, 35(e), and 40(a)(3), Intervenors Rio Grande LNG, LLC, Rio Bravo Pipeline Company, LLC, and Texas LNG Brownsville, LLC respectfully request that this Court grant leave to file the accompanying joint reply in support of their pending petitions for rehearing or rehearing en banc. Intervenors have consulted with opposing counsel, who indicated that Petitioners oppose this motion and plan to file an opposition. The Federal Energy Regulatory Commission (“FERC”) does not oppose this motion.

## **BACKGROUND**

On October 21, 2024, Intervenors Rio Grande, Rio Bravo, and Texas LNG filed timely petitions for panel or en banc rehearing. On October 23, 2024, this Court ordered FERC and Petitioners to respond to the petitions. On December 9, 2024, FERC filed a response in support of the petitions for panel rehearing and rehearing en banc, and Petitioners filed a joint response in opposition. Intervenors now move to file a single Joint Reply in support of the petitions.

## REASONS FOR GRANTING THE MOTION

Good cause exists for a joint reply because the Court-ordered responses to the petitions address recent developments in this Court's caselaw and raise important issues that Intervenorors have not previously had the opportunity to address.

For example, FERC urges the Court to grant rehearing en banc in this case, but suggests the Court may wish to hold this petition pending resolution of en banc proceedings in *Marin Audubon Society v. FAA*, No. 23-1067, which was decided after Intervenorors petitioned for en banc rehearing. A short reply is necessary to address FERC's position on this matter and to explain why this case provides a superior vehicle for the en banc Court to consider whether regulations issued by the Council on Environmental Quality are valid. Because there is no adversity among the parties on that issue in *Marin Audubon*, the Court should take up that question in this case instead. The short attached reply will bring this point to the attention of the Court and assist the Court's deliberations as it decides how to address this high-profile development in its caselaw.

A short reply is also warranted to address the errors in Petitioners' effort to sidestep *Marin Audubon*—issues that could not have been discussed in the petitions. Petitioners, in opposing rehearing en banc, attempt to escape the clear relevance and significance of *Marin Audubon* with a meritless argument about waiver. The attached reply sets the record straight and explains why the important question of whether the non-statutory environmental justice analysis can be invoked to deny or vacate project authorization is properly raised and well presented for the Court's review.

A reply is also warranted to address Petitioners' misrepresentations about the panel's opinion—most importantly, Petitioners' assertion that the panel faithfully applied *Allied-Signal*, when it did not in any way weigh the extreme disruptions the panel's vacatur order will cause alongside the likelihood of FERC reaching the same result on remand. Contrary to Petitioners' depiction, the panel jettisoned decades of circuit precedent and fashioned a new automatic-vacatur regime dictating drastic results even where, as here, FERC is virtually guaranteed to reach the same result on remand and the costs—economic, environmental, and human—of vacatur are vast.

This motion is timely, Intervenorors have coordinated across the cases to file a single joint reply, and the attached joint reply is concise—spanning only 2,717 words and addressing only the most important points for the benefit of the Court.

### **CONCLUSION**

For the foregoing reasons, the Court should grant leave to file the attached joint reply in support of Intervenorors' petitions for panel rehearing or rehearing en banc.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. 27(d)(2) because it contains 599 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 27(d)(2).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Century Schoolbook 14-point font.

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on December 17, 2024.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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